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TAGS: [PREL](#) [PBTS](#) [ETRD](#) [OSCE](#) [UP](#) [MD](#) [RS](#)

SUBJECT: TRANSNISTRIA: "THREE PLUS TWO" TALKS IN MOSCOW

Classified By: Minister Counselor for Political Affairs Kirk Augustine.
Reason 1.4 (b, d)

¶1. (C) Summary: "3 2" talks on Transnistria took place in Moscow April 19 including the mediators -- Russia, Ukraine and the OSCE -- and observers -- U.S. and EU. Russia tried to focus discussion on the customs regime between Moldova and Ukraine. All other sides pushed back, hardest of all Ukraine, whose negotiator noted sharply that the new regime "has been decided." Russia introduced a draft protocol to roll back the new customs regime; the others agreed to study it. Ukraine proposed that the next negotiating round focus on the OSCE's draft delimitation of competencies between Chisinau and Tiraspol as well as on creating monitoring groups on militarization and an evaluation mission on the feasibility of democratic elections in Transnistria. The group agreed to include the delimitation paper in the negotiating agenda. An unofficial translation of the Russian draft protocol is in para 13. End summary.

¶2. (C) Russia (Nesterushkin) led off by complaining about the effects of the Moldovan-Ukrainian customs agreement. In a departure from previous Russian statements, he focused not on the "humanitarian crisis" but on the budgetary effects of depriving the Transnistrian authorities of customs revenues. The consequent inability of Transnistria to provide social services to its people was causing "radicalization" and cast the future of the peace process into doubt.

¶3. (C) OSCE (Hill) replied that the customs issue had a long and complex history. Different sources are giving contradictory information about what is now happening on the ground. Hill ascribed this to an attempt by Transnistrian leader Smirnov to put pressure on Russia and Ukraine. Hill noted that the Moldovan steps needed to be understood in the context of the last five years of negotiating history, which have convinced Moldova that Transnistria is not interested in creating a single economic space as previously agreed. Convincing Moldova to take steps to attract the Transnistrians back to the peace process meant first convincing Moldova that there was a peace process to return to. "This is a chicken-and-egg problem," he said. Hill believed that the registration process under the new regime was not working with perfect transparency, and could be improved.

¶4. (C) Ukraine (Veselovskiy) agreed that the situation is abnormal. He blamed this on Transnistria, whose "unconstructive position" has "gone beyond the bounds of the reasonable." Veselovskiy agreed that some details of the functioning of the new customs regime could be improved. He noted that President Yushchenko had proposed a new initiative of Transnistria one year ago, and its goals remain unrealized. Veselovskiy proposed the creation of expert monitoring groups, one to look at Transnistria's military industry and the other to evaluate weaponry. He also proposed moving forward on an international evaluation by OSCE of the feasibility of democratic elections and on the

new OSCE paper delimiting responsibilities between Chisinau and Tiraspol.

15. (C) EU (Jacobovits) suggested a new round of negotiations in May. There had been some more positive elements to Hill's last interaction with Transnistrian negotiator Litskai, and those needed follow-up. While the simple solution to the customs issue would be for the Transnistrians to allow exports again, the next round needed to include agenda items each party wanted (such as customs) even if the other did not.

16. (C) U.S. (Kramer) noted that the G-8 political directors had requested a more detailed discussion of regional issues such as Moldova at their next meeting on June 7, and they would be formally included in the agenda of the June 29 Ministerial. Undersecretary Burns had called for less assigning of blame and more effort to get the sides working together.

17. (C) Nesterushkin insisted once again that there can be no discussion of politics until there is a unified customs space, to which Veselovskiy retorted that the form of required documentation has been decided. He suggested sending an OSCE mission -- Ukrainian expertise would be at its disposal -- to Moldova and Transnistria to work on smoothing out issues related to obtaining the new documentation. Hill agreed that if this were considered part of the negotiating process, the OSCE can undertake such a mission. The principles have already been decided; the question is how Transnistrian enterprises can register.

18. (C) Nesterushkin insisted yet again that there will be no negotiations until the resolution of the "current crisis," to

MOSCOW 00004198 002 OF 004

which Kramer replied that the majority opinion within the G-8 was that Transnistria had created the crisis itself. Nesterushkin sarcastically asked whether "Japan and Canada" were now going to be invited in as observers. At this point Nesterushkin distributed a Russian draft protocol on customs.

He said the basic deal was that Transnistrian companies would register in Moldova, and Transnistria will keep all the revenues (but see analysis, para 11, and unofficial translation, para 13).

19. (C) All agreed they would study the Russian draft. Veselovskiy promised Hill Ukrainian legal analysis within two days. Hill said this was a two-stage process: the negotiators had to reach consensus before going on to seek agreement of the parties on this complex issue. Hill switched topics to the delimitation paper, saying that Moldovan negotiator Sova confirmed to him three times Moldova's willingness to discuss status and democratization issues. All agreed to support inclusion of the paper in the agenda for upcoming negotiating rounds, though Nesterushkin expressed the reservation that since the new document is an abridgement of a February, 2004 document, the negotiators would have to disavow the earlier document to proceed on to this one.

110. (C) The meeting concluded by setting the next negotiating round for the week of May 17 and agreeing that Hill would signal the group's determination to the Parties when he meets with COE ambassadors in Strasbourg next week.

111. (C) Highlights of the Russian protocol are:

-- By making itself a signatory (along with Ukraine, Moldova and Transnistria), Russia is implicitly claiming a say in affairs on the Ukrainian-Moldovan border.

-- The third and fourth preambular paragraphs -- on the "unacceptability" of economic pressure and the "impermissibility" of administrative barriers to trade hint at a Russian offer of quid pro quo to the Moldovans: this

protocol in exchange for a repeal of the ban on imports of Moldovan wine.

-- According to Para 2, the form of any customs stamps must be agreed by the Transnistrians (who can therefore refuse all Moldovan stamps without contradicting the protocol). Transnistrian freedom from tax liability is not dependent upon further agreement with Moldova.

-- Both Parties must make changes in their internal legislation; failure to do so does not prevent the Protocol from entering into force; rather, it gives Russia and Ukraine full rights to do whatever they deem necessary to ensure free movement of goods into and out of Transnistria.

-- While waiting for the Protocol to enter into force, the new customs regime is to be rolled back, creating a new base-line favorable to Transnistria.

¶12. (C) Comment: All the above points indicate that Russia understands this paper is a non-starter. It appears to us in Moscow that the reaction of the U.S. (in close cooperation with Ukraine and the EU) can be a) to call the draft a non-starter and refuse to discuss it; b) try to amend it to make it more acceptable; or c) get the Ukrainians -- the other "State-Guarantor" -- to introduce a competing draft that shuts the Russians out of the Ukrainian-Moldovan border operations, binds the Transnistrians to more transparent procedures that the OSCE works out with Moldova, and addresses in some way the budgetary issues. All the options have drawbacks. Option (a) will have the Russians constantly raising this text as the first order of business at any Transnistria meeting, and complaining about the obstructionism of the other negotiators. Option (b) is a reasonable option if we are willing to negotiate the text for months or even years -- an advantage being that during those negotiations the current regime holds. Both Options (a) and (b) could lead to the irrelevance of the 5 2 format that includes the U.S. and EU -- which may be the real aim of the Russian paper. Option (c) is reasonable if Ukraine is willing and able to lead the charge against the Russians -- at a time when its own government is still in formation. End Comment.

¶13. Begin text of unofficial translation of Russian draft protocol:

PROTOCOL

Mechanism for the Conduct of Foreign Economic Activity of Transnistria

MOSCOW 00004198 003 OF 004

The Republic of Moldova and Transnistria, hereinafter "the Parties," as well as the Russian Federation and Ukraine, hereinafter "the States-Guarantors," in the presence of the plenipotentiary representatives of the OSCE, EU and USA,

Striving to create an international-juridical mechanism for the unhindered conduct by Transnistria of foreign economic activity on the basis of international standards and of the obligations of the Parties,

Recognizing the unacceptability of measures of economic, political or other pressure and considering that all questions must be resolved in the framework of a constructive dialog of equals,

Recognizing the impermissibility of imposing administrative barriers that could artificially hinder the free economic activity and conditions for the broadening of international economic activity,

Confirming their commitment to agreements reached in the course of the negotiating process, including the Memorandum

"On the Bases for Normalization of Relations between the Republic of Moldova and Transnistria" of 8 May 1997,

Viewing the resolution of the issue of a mechanism for the conduct of foreign economic activity of Transnistria as an important component of the process of elaborating a stable model of a comprehensive and just normalization of relations between the Republic of Moldova and Transnistria,

Striving to strengthen the regime of transparency and openness on the Transnistrian sector of the border with Ukraine,

Conscious of responsibility for the welfare of the population, and for securing the socio-economic rights of the inhabitants of Transnistria,

Have agreed on the following:

1. Transnistria has the right to autonomous conduct of foreign economic activity in accordance with the present Protocol, considering as well the agreements of the negotiating process.

2. The transportation of cargoes across the Transnistrian-Ukrainian sector of the border by enterprises registered in Transnistria, with the aim of exporting to Ukraine and/or for transit through Ukraine to a third country shall be carried out on the basis of accompanying ("tovarosoprovoditel'nyy") commercial or other documents on which are affixed customs stamps, the form of which shall be agreed and implemented by the Parties with the advice of authorized foreign ("zarubezhnyy") and international structures.

3. The customs clearance of cargoes destined for export to Ukraine and/or for transit through Ukraine to a third country shall be carried out on condition of presentation by Transnistrian exporter-organizations of documents confirming the listing (vneseniye) of these economic agents in special registers for the statistical accounting of juridical persons authorized to conduct foreign economic activity.

4. The form of the special registers for statistical accounting, the rules for their book-keeping, and the agencies of the Republic of Moldova and Transnistria authorized to keep them will be determined by separate agreement of the Parties no later than ten days after the signing of the present Protocol.

5. The listing of economic agents of Transnistria in special registers for statistical accounting of juridical persons authorized to conduct foreign economic activity shall be carried out free of charge on the basis of copying out from registration (founding) documents given out by the agencies of Transnistria for registration of juridical persons no later than ten days after application to the authorized agencies.

The listing of economic agents of Transnistria in the special registers for statistical accounting of juridical persons authorized to carry out foreign economic activity shall be carried out in strict accordance with the organizational-legal form and the form of property of the applying juridical person which exist at the time of the presentation of the necessary documents.

The listing of economic agents of Transnistria in the special registers for statistical accounting of juridical persons authorized to carry out foreign economic activity shall be

MOSCOW 00004198 004 OF 004

confirmed by appropriate witness.

6. The listing of economic agents of Transnistria in the special registers for statistical accounting of juridical

persons authorized to carry out foreign economic activity shall not give rise to any sort of tax or other obligation by these economic agents to the budget or tax system of the Republic of Moldova and cannot serve as the basis for payment of any taxes or fees.

17. The listing of economic agents of Transnistria in the special registers for statistical accounting of juridical persons authorized to carry out foreign economic activity may not serve as a basis for reviewing property rights with regard to the property of those enterprises, as well as with regard to their shareholdings, obligations or other property rights.

18. Oversight of the fairness and timeliness of the movement of Transnistrian cargoes on the Transnistrian-Ukrainian sector of the border shall be carried out on the basis of exchange of information between the authorized customs agencies of the Republic of Moldova and Ukraine with regard to customs documentation ("obespecheniye") issued and with regard to the volume of the movement of cargoes for export to Ukraine and/or transit through the territory of Ukraine to a third country.

19. The entry of import cargoes into Transnistria shall be carried out without hindrance in accordance with contracted obligations of the economic agents of Transnistria, without the levying of any taxes, fees, or other liabilities for payment into the budget of the Republic of Moldova. By agreement with the Republic of Moldova and in accordance with the national legislation of Ukraine, Ukrainian customs agencies have the right to present to the Moldovan side information concerning the volumes and descriptions of imports into Transnistria.

110. For the implementation of the present Protocol, the Parties shall within one week adopt necessary changes and additions to their internal legislation.

In the event that necessary changes are not adopted by one of the Parties, the States-Guarantors shall make every effort and take all necessary measures to secure the unhindered conduct of export-import operations by Transnistria.

111. From the day of the signing of the present Protocol and until its entry into force, the Parties and the States-Guarantors shall return to the regime of movement of cargoes across the Ukrainian-Transnistrian sector of the border which existed on 28 February 2006.

112. The guarantee (garantiynyy) elements of the present Protocol will be determined in the framework of further interaction of the plenipotentiary representatives of the Parties, States-Guarantors and other participants in the negotiating process for Transnistrian Resolution in the 5 2 format.

113. The present Protocol shall enter into force 14 days after signing and shall remain in force until the coming into being of a final model of political resolution of relations between Moldova and Transnistria and the conclusion of an agreement in international law on a higher level of cooperation between the Parties in the indicated districts.

The refusal of one of the Parties to bring its internal legislation into agreement with the present Protocol shall not hinder its entry into force.

End text.

BURNS